

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

STATE OF MISSOURI ex rel. OFFICE OF THE PUBLIC COUNSEL and
MISSOURI INDUSTRIAL ENERGY CONSUMERS,

Appellants,

v.

MISSOURI PUBLIC SERVICE COMMISSION and
UNION ELECTRIC COMPANY d/b/a AMERENUE,

Respondents.

DOCKET NUMBER WD72498
(Consolidated with WD72508)

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: February 1, 2011

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Judge

APPELLATE JUDGES

Division One: Mark D. Pfeiffer, Presiding Judge, and Thomas H. Newton
and Alok Ahuja, Judges

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI ex rel. OFFICE)
OF THE PUBLIC COUNSEL and)
MISSOURI INDUSTRIAL ENERGY)
CONSUMERS,)
)
Appellants,)
v.)
)
MISSOURI PUBLIC SERVICE)
COMMISSION and UNION ELECTRIC)
COMPANY d/b/a AMERENUE,)
)
Respondents.)

WD72498 (Consolidated with WD72508)

Cole County

Before Division One Judges:

Mark D. Pfeiffer, Presiding Judge, and
Thomas H. Newton and Alok Ahuja, Judges

The Office of Public Counsel and Missouri Industrial Energy Consumers appeal from the judgment of the Circuit Court of Cole County affirming the Public Service Commission Order promulgating 4 CSR 240-3.162 and 4 CSR 240-20.091 as lawful and reasonable.

On appeal, Appellants argue that the Regulations violate section 386.266 because the Regulations: (1) were not timely adopted; (2) allow electric utilities to earn more than a fair rate of return on equity for each periodic rate adjustment; (3) are contrary to the statutory true-up mechanism; and (4) conflict with the statutory cap on annual adjustments.

AFFIRMED.

Division One holds:

We find that the Regulations are lawful and reasonable as promulgated by the Public Service Commission. As a matter of law, the Public Service Commission did not have authority to promulgate the Regulations until the statute's effective date, and then had 150 days after the

initiation of the rulemaking proceeding to complete promulgation. Upon its filing of the final order of rulemaking with the Secretary of State, the Public Service Commission completed all steps necessary to promulgate the Regulations within 150 days. Furthermore, while an initial application for an ECRM may be approved only as part of a general rate case in which all revenues and expenses of the utility are examined to set fair and reasonable rates, the legislature intended to allow the PSC to make interim rate adjustments for prudently incurred environmental compliance costs without the need to consider any revenues and expenses other than those environmental costs, as long as the rate adjustment (1) provides the utility with a sufficient opportunity to earn a fair return on equity and (2) includes provisions for an annual true-up which remedies any over- or under-collections. Simply because the Regulations provide for *single issue* ratemaking mechanisms, does not suggest over-earning by the utilities. Finally, because Staff interpretations provided during the comment period do *not* constitute rules and are *not* incorporated into the rules unless expressly done so by the Public Service Commission in its final order of rulemaking, Appellants cannot rely on comments made by the Staff concerning the cap on annual adjustments in an attempt to invalidate the Regulations.

Opinion by: Mark D. Pfeiffer, Judge

February 1, 2011

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